

RESOLUTION NO. 75701

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A SIXTH AMENDMENT TO THE AGREEMENT WITH FESTIVAL FUN PARKS, LLC DBA PALACE ENTERTAINMENT FOR THE LEASE AT LAKE CUNNINGHAM REGIONAL PARK TO MODIFY PROVISIONS REGARDING MINIMUM MAINTENANCE ALLOCATION FUNDS AND CAPITAL REPAIRS, AND TO MAKE OTHER TECHNICAL CHANGES

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager is hereby authorized to negotiate and execute a Sixth Amendment to the agreement with Festival Fun Parks, LLC dba Palace Entertainment ("Raging Waters") for the lease at Lake Cunningham Regional Park to modify the Agreement to provide as follows:

1. Amend annual capital investment to allow banking for three years of capital funding, so that larger capital investments, such as new attractions, can be added to the facility.
2. Set the ongoing capital repair amount to \$35,000 for each year.
3. Raging Waters shall increase the minimum maintenance allocation fund by 7.4% every three years, and to ensure that the minimum maintenance allocation is not tied to the Consumer Price Index ("CPI") for Urban Wage Earners and Clerical Workers.
4. Amend the contact information for the agreement from the Director of Conventions, Arts and Entertainment to the Director of Parks, Recreation and Neighborhood Services ("PRNS") and amend the notices address to City Hall.
5. Amend Exhibit E, "Insurance Requirements" to update the Raging Waters insurance current requirements.
6. Raging Waters shall provide PRNS Director an annual report certifying that the capital investment has been satisfied.

ADOPTED this 25th day of January, 2011, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, ROCHA, PYLE; REED.

NOES: NONE.

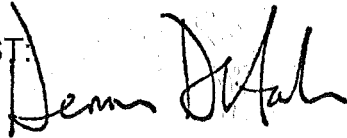
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk